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**NOTICE OF CROSS-MOTION AND CROSS-MOTION**

**TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

PLEASE TAKE NOTICE that on April 4, 2008, at 10:00 a.m., or as soon thereafter as the Matter may be heard, before the Honorable Samuel Conti of the United States District Court, Northern District of California, 450 Golden Gate Avenue, San Francisco, the undersigned law firms, Alioto Law Firm (“Alioto”) and Miller Law LLC (“Miller”), will and hereby oppose the motions of (i) the law firm of Trump, Alioto, Trump & Prescott, LLP; (ii) the law firms of Zelle, Hofmann, Voelbel, Mason & Gette, LLP and Lovell Stewart Halebian LLP; and (iii) the law firms of Ball & Scott and Goldman Scarlato & Karon, P.C. to be appointed interim lead counsel for the putative indirect purchaser class.

Please take further notice that Alioto and Miller cross-move for an order appointing Alioto and Miller as the interim lead class co-counsel for the putative indirect purchaser class. Notice for this cross-motion is pursuant to Civil Local rule 7-3(a) and Judge Conti’s Order of March 7, 2008 which lifted the stay on all motions and proceedings in this matter, and which set all motions for lead counsel to be heard on April 4, 2008<sup>1</sup>. This cross-motion is also pursuant to Rules 1 and 23(g) of the Federal Rules of Civil Procedure. The grounds for this cross-motion are that this antitrust case will benefit from the appointment of interim class counsel, and that the undersigned proposed interim lead class co-counsel are best qualified for the position because of their extensive experience both in preparing antitrust as well as other complex class action litigations for trial, and then trying such matters at trial

This cross-motion is based on this notice of cross-motion, supporting memorandum of points and authorities, exhibits, declarations of Joseph M. Alioto and Marvin A. Miller, the argument of counsel, and the pleadings and records on file herein.

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<sup>1</sup> See Exhibit A, “Order Lifting Stay, Setting Status Conference, and Setting Hearings on Motions to Appoint Lead Counsel.” *Crago*, Case No. 3:07-cv-05944 SC, MDL No. 1917, Doc. 118.

1 Dated: March 14, 2008

Respectfully submitted,

2  
3 By: /s/ Joseph M. Alioto  
Alioto Law Firm

4  
5 By: /s/ Marvin A. Miller  
Miller Law LLC

6 *Attorneys for Plaintiffs and the Proposed*  
7 *Class*  
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1 I. INTRODUCTION AND SUMMARY.

2 Pursuant to Federal Rules of Civil Procedure 1 and 23(g), the undersigned  
 3 law firms, Alioto Law Firm (“Alioto”) and Miller Law LLC (“Miller”) acting as counsel  
 4 for Plaintiffs Mark Pierce and Barbara Caldwell, oppose the motions of (i) the law firm of  
 5 Trump, Alioto, Trump & Prescott, LLP; (ii) the law firms of Zelle, Hofmann, Voelbel,  
 6 Mason & Gette, LLP and Lovell Stewart Halebian LLP; and (iii) the law firms of Ball &  
 7 Scott and Goldman Scarlato & Karon, P.C., to be appointed interim lead counsel for the  
 8 putative indirect purchaser class; and cross-move to seek appointment as interim, co-lead  
 9 counsel for the putative indirect purchaser plaintiff class in this consolidated multidistrict  
 10 litigation (“MDL”). As required under the parameters of Rule 23(g), the Alioto and Miller  
 11 firms have proven track records with extensive previous experience in antitrust as well as  
 12 many other forms of class action litigation and specifically in prosecuting antitrust trials,  
 13 including prosecuting cases against alleged international price-fixing cartels. Miller Decl. at  
 14 ¶¶5-7; Alioto Decl. at ¶¶1-7.

15 For three reasons, the appointment of these two firms as interim lead counsel  
 16 is very beneficial to the class and preferable to the appointment of the five other sets of  
 17 counsel seeking lead positions for the indirect purchaser class. First, the combined Alioto  
 18 and Miller firms’ antitrust trial experience, as well as experience in numerous other forms  
 19 of complex civil litigation, is significant and unique among the candidates, offering the class  
 20 the opportunity to be represented by several of the country’s leading antitrust trial counsel.  
 21 In a price-fixing case, the proven ability both to prepare effectively for and then actually try  
 22 these sorts of complex cases is a critical element in obtaining an excellent recovery for the  
 23 class, either by way of settlement or trial.

24 Second, based on each proposed interim co-lead having almost forty years’  
 25 experience in the successful conduct of a wide range of complex litigation matters, the  
 26 Alioto and Miller approach to class actions is one which will provide an efficient,  
 27 streamlined and economically appropriate case management style. If appointed as interim  
 28



1 lead counsel, together the two firms would promptly organize competent and experienced  
2 lawyers to effectively and efficiently organize the work and prosecute the case.

3 Third, these firms' approach holds the potential for conduct of this matter in  
4 a fashion considerably more favorable to the class in terms of fees and costs than is often  
5 found in these cases. These two counsel would assure that the work is done effectively,  
6 with decisive leadership guiding all elements of trial preparation and the actual trial. This  
7 structure places a premium on obtaining a recovery; thus, it will focus on doing just that.  
8 The smaller lead structure eliminates repetition and unnecessary accumulation of billings,  
9 while simultaneously providing for a more streamlined and prompt decision-making  
10 process.

11 On the basis of their experience and expertise in antitrust cases of this type,  
12 Alioto and Miller believe they are better able than the other firms seeking leadership in this  
13 action to handle the responsibilities and obligations that will accompany leadership  
14 effectively and efficiently, and indeed will attempt to involve many of those attorneys in the  
15 prosecution of the indirect purchaser claims commensurate with the needs of the case.  
16 Traditionally in a price-fixing case, the direct purchasers and indirect purchasers will, as  
17 appropriate, prosecute the case in concert as required by Rule 1. On the direct side in this  
18 case, there are several pending motions for appointment of interim lead counsel.  
19 Potentially, then, there could be a dozen or more, *de facto* if not *de jure*, "lead" counsel for  
20 both direct and indirect counsel. This would be an impractical, if not wholly unnecessary,  
21 manner in which to prepare for an antitrust price-fixing trial.

22 The view that "less is more" is in sync with evolving decisions on Rule  
23 23(g). In two very recent Northern District of California antitrust matters, the District  
24 Courts expressly rejected multi-firm "carve-ups" by firms that often work together in a  
25 number of cases—arrangements that appear to be nothing more than the product of  
26 bargaining by competing plaintiffs' firms. The Northern District Courts have instead  
27 chosen one or two interim lead counsel. *See, e.g., In re Int'l Air Transp. Surcharge*

1 *Antitrust Litig.*, MDL No. 1793 (December 2006 order appointing two lead counsel) and  
 2 Judge Illston's appointment of Joseph Alioto as co-lead counsel on behalf of the indirect  
 3 purchaser plaintiffs in *In re TFT-LCD (Flat Panel) Antitrust Litig.*, MDL No. 1827 (N.D.  
 4 Cal.). *See* Alioto Decl., Ex. C.

5 Consistent with these and many other decisions limiting the number of lead  
 6 counsel, and in order to provide the class with the most judicious and manageable trial  
 7 preparation, movants respectfully request the Court to appoint the Alioto and Miller firms  
 8 as interim lead counsel.

## 9 II. BACKGROUND.

10 This litigation arises from an alleged conspiracy by defendants LG  
 11 Electronics, Inc.; Samsung Electronics Co., Ltd.; Samsung SDI Co., Ltd.; Samsung  
 12 Electronics America, Inc.; Samsung SDI America, Inc.; Samtel Color Ltd.; Toshiba  
 13 Corporation; Toshiba America Electronic Components, Inc.; Toshiba America Information  
 14 Systems, Inc.; Matsushita Toshiba Picture Display Co., Ltd.; MT Picture Display  
 15 Corporation of America (New York); MT Picture Display Corporation of America (Ohio);  
 16 Matsushita Electric Industrial Co., Ltd.; Panasonic Corporation of North America; Beijing-  
 17 Matsushita Color CRT Company, Ltd.; Orion Electric Co., Ltd.; Orion America, Inc.;  
 18 Hitachi, Ltd.; Hitachi America, Ltd.; Hitachi Asia, Ltd.; Chungwha Picture Tubes, Ltd.;  
 19 Chungwha Picture Tubes Malaysia Sdn.Bhd.; LP Displays International, Ltd.; Koninklijke  
 20 Philips Electronics N.V.; Philips Electronics North America; Irico Group Corp.; Irico  
 21 Display Devices Co., Ltd.; Thai CRT Company, Ltd.; and Tatung Company of North  
 22 America, Inc. ("Defendants") to fix, raise, maintain or stabilize the prices of products  
 23 containing Cathode Ray Tubes ("CRT Products") sold in the United States.

24 On November 8, 2007, antitrust authorities in Europe, Japan and South  
 25 Korea raided the offices of several of the Defendants as part of an international investigation  
 26 of alleged price fixing in the CRT Products industry.

Beginning on November 26, 2007, class actions alleging violations of federal and state antitrust laws by Defendants were filed both in this judicial district and others on behalf of direct and indirect purchasers of Defendants' CRT Products. On December 13, 2007, Miller filed a class action complaint on behalf of Plaintiff Barbara Caldwell and a class of all individuals and entities that indirectly purchased CRT Products in the United States from Defendants, their predecessors, or their controlled subsidiaries and affiliates. See *Caldwell v. Matsushita Electric Industrial Co., Ltd., et al.*, Case No. 3:07-cv-06303 SC. On January 17, 2008, Alioto and Miller filed a class action complaint on behalf of Plaintiff Mark Pierce and a class of all individuals and entities that indirectly purchased CRT Products in the United States from Defendants, their predecessors, or their controlled subsidiaries and affiliates during the period beginning at least January 1, 1995 through the filing of the Complaint. Plaintiffs allege that Defendants' cartel and conspiracy is in violation of Section 1 of the Sherman Act, 15 U.S.C. §1, as well as various state antitrust and consumer protection statutes.

In addition to the cases filed by Plaintiffs, over a dozen other similar cases have been filed in the Northern District of California against Defendants. On January 16, 2008, this Court entered an order relating seven of those cases to the low-numbered case, *Crago, Inc. v. Chungwha Picture Tubes, Ltd., et al.*, 3:07-cv-5944 SC ("Crago").<sup>2</sup> Plaintiff is aware of at least fifteen additional similar cases which have been filed in various other judicial districts. On November 29, 2007, plaintiff Crago, Inc. filed a Motion for Transfer and Consolidation of Related Actions to the Northern District of California Pursuant to 28 U.S.C. §1407.

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<sup>2</sup> The January 16, 2008 Order related the following actions to the Crago action: *Nathan Muchnick, Inc. v. Chungwha Picture Tubes Ltd., et al.*, 3:07-cv-5981 SC; *Juetten, et al. v. Chungwha Picture Tubes, Ltd., et al.*, 3:07-cv-6225 JL; *Hawel v. Chungwha Picture Tubes, Ltd., et al.*, 3:07-cv-6279 EMC; *Caldwell v. Matsushita Electric Industrial Co., Ltd., et al.*, 3:07-cv-6303 SC; *Art's TV & Appliance v. Chungwha Picture Tubes, Ltd., et al.*, 3:07-cv-6416 JCS; and *MoniKraft, Inc. v. Chungwha Picture Tubes, Ltd., et al.*, 3:07-cv-6433 SC. This Court has entered several other orders relating the other similar actions filed in this District to the Crago action.

On February 15, 2008, the Judicial Panel on Multidistrict Litigation (“JPML”) transferred the CRT Cases to this Court for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. §1407. The JPML found that the Northern District of California was an appropriate transferee forum for this litigation because (1) there were already thirteen actions pending there; and (2) some defendants and some plaintiffs supported centralization here. According to the JPML Transfer Order, this litigation then consisted of a lead case filed in the Northern District of California and a lead case filed in the Southern District of New York, as well as 26 potentially related “tag-along” actions. A true and correct copy of the JPML Transfer Order is attached to the Alioto Declaration as Exhibit D<sup>3</sup>.

In light of the JPML Transfer Order and the many additional cases from several judicial districts which are now before this Court, it is appropriate for this Court to consider a leadership structure for the putative plaintiff classes. Appointing Alioto and Miller as interim co-lead counsel at this time will insure that the putative indirect purchaser class will be represented by law firms with substantial experience in prosecuting complex antitrust class actions in federal court and which are best able to fairly and adequately represent the interests of the putative class.

### III. ARGUMENT.

#### A. Appointment Of Interim Co-Lead Counsel To Represent The Class Is Appropriate.

Pursuant to Rule 23(g) of the Federal Rules of Civil Procedure, the Court “may designate interim counsel to act on behalf of the putative class before determining whether to certify the action as a class action.” Fed. R. Civ. Proc. 23(g)(3). Where, as here, there are numerous class actions pending, “appointment of class counsel is necessary to protect the interests of class members.” *Donaldson v. Pharmacia Pension Plan*, 2006

<sup>3</sup> Plaintiff Pierce’s complaint, originally filed in Judge Chesney’s court, was consolidated with *Crago* on March 10, 2008. (Exhibit B) This motion was filed as promptly as possible after the consolidation order was entered.

1 U.S. Dist. LEXIS 28697, \*2-3 (S.D. Ill. May 10, 2006); *see also In re Cardinal Health,*  
 2 *Inc. ERISA Litigation*, 225 F.R.D. 552, 554 (S.D. Ohio 2005). The goal of the Court in  
 3 considering this motion is to determine who will best represent the interests of the class, and  
 4 who will best be able to accomplish the class action goals of efficiency and economy in  
 5 doing so. *See Coleman v. General Motors Acceptance Corp.*, 220 F.R.D. 64, 100 (M.D.  
 6 Tenn. 2004).

7 In appointing interim lead counsel under Rule 23(g), the Court must  
 8 determine whether the applicant firm(s) will fairly and adequately represent the interests of  
 9 the proposed class. *See Fed. R. Civ. Pro. 23(g)(1)(B)*. The Court's determination of that  
 10 question is informed by the criteria set forth in Rule 23(g)(1):

11 In appointing class counsel, the court: (A) must consider: the work  
 12 counsel has done in identifying or investigating potential claims in the  
 13 action; counsel's experience in handling class actions, other complex  
 14 litigation, and the types of claims asserted in the action; counsel's  
 15 knowledge of the applicable law; and, the resources that counsel will  
 16 commit to representing the class; (B) may consider any other matter  
 17 pertinent to counsel's ability to fairly and adequately represent the  
 18 interests of the class. *Fed. R. Civ. Pro. 23(g)(1)*. "In evaluating  
 19 prospective class counsel, the Court should weigh all pertinent  
 20 factors. No single factor should necessarily be determinative in a  
 21 given case." Rule 23(g) advisory committee's note (2003).

22 As explained more fully below, Alioto and Miller each satisfy the factors set  
 23 forth in Rule 23(g), and are well-qualified to manage this litigation alone or in conjunction  
 24 with other firms designated by the Court.

25 B. The Alioto And Miller Firms Have Substantial Experience Trying  
 26 Class Actions And Antitrust Claims Involving Alleged International  
 27 Price-Fixing Cartels. They Are Qualified To Act As Co-Lead  
 28 Counsel And Meet The Requirement Of Experience, Knowledge, And  
Resources.

1. Alioto Law Firm.

Alioto Law Firm practices exclusively in the area of antitrust law and offers  
 over 38 years of prosecuting antitrust actions under every section of the antitrust laws,

1 including the prosecution of cases against international price-fixing cartels operating in  
2 Asia, Europe, and the United States. Alioto Decl. at ¶¶1-3. Of all of the attorneys that  
3 seek appointment of interim class counsel, Joseph M. Alioto is by far the most experienced  
4 antitrust trial attorney. He has tried and won as many or more private antitrust actions as  
5 any other plaintiff's antitrust attorney in the United States including, for example, *Bray v.*  
6 *Safeway* (in 1974 the largest judgment in the history of the antitrust laws at that time) and  
7 *McDonald v. Johnson & Johnson* (in 1981, the largest judgment—\$170 million—for  
8 individuals in the history of the antitrust laws). *See* Alioto Decl., Ex. A. With over 80  
9 trials to his credit, Mr. Alioto has tried antitrust matters involving every major industry  
10 from high-tech and electronics to manufacturing to service, from trading to finance to  
11 supply, from retail to transportation to mining, both foreign and domestic. Mr. Alioto is a  
12 regular lecturer, teacher, and nationwide consultant to antitrust practitioners. Indeed, his  
13 skills as a plaintiff's antitrust trial lawyer are so renowned that he is regularly retained as a  
14 consultant or to conduct antitrust trials—including by some of the candidates for interim  
15 lead counsel in this case. *See* Alioto Decl. at ¶7.

16 Alioto Law Firm's skills are particularly useful here because this is an  
17 international price-fixing case. The Alioto Law Firm and Mr. Alioto, in particular, have  
18 actually tried international price fixing cases. As part of his extensive experience, Mr.  
19 Alioto deposed the Chief Executives of major electronics firms including, for example,  
20 executives from named defendants in this case. In short, Mr. Alioto has a breadth of  
21 experience working in and developing international antitrust cases for trial. *See* Alioto  
22 Decl. at ¶¶3-4. As set forth in the accompanying Alioto Declaration, the Alioto firm  
23 gained an understanding of the mechanics of alleged price-fixing cartels in Asia and Europe  
24 beginning in the 1980s. His familiarity with the allegations in this case began long before  
25 2008, when government investigations into the related LCD market began to surface in  
26 2006. Some manufacturers who were defendants and/or witnesses in these earlier cases  
27 appear to have played a critical role in this case.

1           Based on previous litigation, Alioto Law Firm understands which witnesses  
 2 are important, how the manufacturers operate internally and with other defendants, and their  
 3 pressure points, weakness, or strategies, any of which may lead to earlier settlements with  
 4 some or all of the defendants. Because of the Alioto firm's experience and past work-  
 5 product, it has a leg up on the alleged practices, potential locations, and manner in which  
 6 alleged price fixing may have occurred. Given the breadth of this past experience, no other  
 7 firm seeking appointment is better prepared to direct the investigation and trial preparation.

8           The attorneys who would work on the matter are listed in Exhibits A and B  
 9 to the Alioto Declaration and include:

10           a.     Joseph M. Alioto.

11           Joseph M. Alioto has over 38 years of experience prosecuting private  
 12 antitrust cases. Not only has he argued in the Supreme Court of the United States, every  
 13 circuit of the United States Courts of Appeals, and United States District Courts of  
 14 approximately 40 states, but he has also prosecuted cases against foreign corporations  
 15 headquartered in Australia, Asia, Europe, and South and Central America. Alioto Decl. at  
 16 ¶¶1-3. In addition to his breadth of experience, Mr. Alioto excels in successful prosecution  
 17 of antitrust cases, having tried and won more or as many antitrust cases as any other  
 18 attorney in the country. *See* Alioto Decl., Ex. A. Additionally, Mr. Alioto has the most  
 19 impressive record of published antitrust decisions in federal courts of any counsel applying  
 20 to be interim lead counsel. *See* Alioto Decl., Ex. A. Having prosecuted cases throughout  
 21 the world, Mr. Alioto is familiar not only with the strategies, tactics, and procedures  
 22 necessary for prosecuting such cases and bringing them to trial, but he is also intimately  
 23 familiar with the policies, practices, and procedures of the named defendants in this  
 24 particular case. Alioto Decl. at ¶¶4, 6.

25           In addition to his nearly impeccable record as an antitrust attorney who has  
 26 represented antitrust plaintiffs in more than 300 cases, Mr. Alioto is recognized as an expert  
 27 in antitrust matters. He has lectured at American Bar Association meetings as well as other



1 symposia on the techniques of prosecuting and trying antitrust cases; he has been asked by  
 2 other law firms to lead them in the prosecution of these cases; he has testified before the  
 3 United States Senate Judiciary Committee and participated in televised debates with the  
 4 Reagan and Bush Administrations regarding antitrust law. *See* Alioto Decl. at ¶¶5,7, Ex.  
 5 A. During his speaking engagements, Mr. Alioto covers both the pragmatic instruction  
 6 focused on how to try international antitrust cases to the theoretical and philosophical  
 7 underpinning of antitrust laws. *Id.*

8 b. Theresa D. Moore.

9 Theresa D. Moore focuses on antitrust, unfair competition, business,  
 10 consumer, and complex class action cases. Ms. Moore has represented clients in antitrust  
 11 litigation involving illegal pricing, illegal price-fixing conspiracies, and class actions  
 12 involving indirect purchasers in industries ranging from travel to retail to drug  
 13 manufacturing. Ms. Moore has served as counsel in more than seven class action lawsuits,  
 14 both in California and nationwide. Since 1981, Ms. Moore has been lead counsel in over  
 15 100 trials, including civil and criminal trials.

16 In addition to her antitrust and class action background, Ms. Moore serves as  
 17 a Judge Pro Tem for the State of California in San Francisco Superior Court; she is a  
 18 distinguished Adjunct Professor in Trial Advocacy and Evidence courses at the University  
 19 of California, Hastings College of the Law. Ms. Moore also specializes in mediation, as  
 20 she is a California Certified Mediator and Special Master, a position through which she has  
 21 successfully mediated approximately 150 cases for private and government organizations.

22 c. Angelina Alioto-Grace.

23 Angelina Alioto-Grace focuses on antitrust, complex business torts,  
 24 intellectual property, unfair competition, and class action lawsuits. After having clerked for  
 25 the Office of Counsel to the President of the United States, Ms. Alioto-Grace's experience  
 26 includes both trial and appellate advocacy. As a trial lawyer, Ms. Alioto-Grace excels at all  
 27



1 aspects of trial preparation; she also is instrumental in pre-trial responsibilities, including  
2 discovery, client management, and settlement negotiation.

3 d. Joseph M. Alioto, Jr.

4 Joseph M. Alioto, Jr. is admitted to practice in the United States Supreme  
5 Court, the Ninth Circuit Court of Appeals, United States District Courts in California and  
6 Ohio, and the California Supreme Court. Mr. Alioto, Jr., has prosecuted federal and  
7 California antitrust and unfair competition violations exclusively for five years; he has  
8 served as both first- and second-chair counsel in actions involving price-fixing,  
9 monopolization, price discrimination, merger enforcement, and competition and business  
10 tort claims. In price-fixing cases, Mr. Alioto, Jr., has represented clients in the software,  
11 oil, air transportation, pharmaceutical, rail freight, hotel, and HVAC manufacturing  
12 industries.

13 Of particular note to this case, Mr. Alioto, Jr., is at the forefront of the  
14 debate concerning “pass-on” issues in Direct and Indirect Purchaser overcharge cases. *See*  
15 Alioto Decl., Ex. B. He has challenged the availability of the pass-on defense in so-called  
16 “Illinois Brick Repealer” states as an issue of first-impression currently pending in the  
17 California Court of Appeal.

18 2. Miller Law LLC.

19 As set forth in Exhibit A to his Declaration, Miller Law LLC, and Marvin  
20 Miller in particular, has served as a lead class counsel in numerous antitrust class actions  
21 both its home District and throughout the country. *See, e.g., Sebo v. Rubenstien*, 188  
22 F.R.D. 310, 317 (N.D. Ill. 1999) (“Miller Faucher is experienced in antitrust class action  
23 litigation and defendants do not dispute that they are competent, qualified, experienced and  
24 able to vigorously conduct the litigation.”); *In re Airline Ticket Commission Antitrust Litig.*,  
25 MDL No. 1058 (D. Minn.) (Miller Faucher co-lead counsel in antitrust class action on  
26 behalf of travel agents against the major airlines for allegedly fixing the amount of  
27 commissions payable on ticket sales. The action settled for \$87 million. *In re Airline*

1 *Ticket Commission Antitrust Litig.*, 953 F.Supp. 280 (D. Minn. 1997); *In re Synthroid*  
 2 *Marketing Litig.*, 264 F.3d 712 (7th Cir. 2001) (Miller Faucher co-lead counsel for class of  
 3 consumers of the drug Synthroid. The action settled for \$87 million.). In *In re Relafen*  
 4 *Antitrust Litig.*, 221 F.R.D. 260 (D. Mass. 2004), the court singled out Miller Faucher as  
 5 experienced and vigorous advocates. *Id.* at 273. In the opinion granting final approval to a  
 6 \$75 million settlement, the court commented that “Class counsel here exceeded my  
 7 expectations in these respects [i.e., experience, competence, and vigor] in every way.” *In*  
 8 *re Relafen Antitrust Litig.*, 231 F.R.D. 52, 85 (D. Mass. 2005); *see also id.* at 80 (“The  
 9 Court has consistently noted the exceptional efforts of class counsel.”).

10 In a case which was thereafter transferred by the Judicial Panel on  
 11 Multidistrict Litigation to this District, where it now proceeds before Judge Breyer *sub nom.*  
 12 *In re International Air Transportation Surcharge Antitrust Litigation* (N.D. Cal., MDL No.  
 13 1793), Judge Robert Gettleman (U.S. D.C. N.D. Ill.), in *McGovern, et al. v. AMR*  
 14 *Corporation, et al.*, No. 06-C-3444 et al., commented on Mr. Miller’s leadership skills in  
 15 that matter as follows: “Mr. Miller, with all due respect... If I were to decide right now  
 16 whether or not you were qualified to be lead counsel in the cases pending in this district or  
 17 in any other district, I would find that you are more than qualified...” August 15, 2006, p.  
 18 3.

19 Miller Law LLC, as Proposed Interim Counsel, is also ready, willing and  
 20 able to commit the resources necessary to litigate these cases vigorously.

21 Proposed Interim Counsel have already committed time and efforts to the  
 22 research and litigation of these cases, and are prepared, as they have with numerous other  
 23 cases, to commit considerable financial resources to the successful prosecution of these  
 24 cases.

25 In sum, because Proposed Interim Counsel satisfy all of the requirements for  
 26 Rule 23(g), and because appointment of interim class counsel is necessary and appropriate  
 27

1 to the administration of these complex class action cases, Plaintiffs' Motion should be  
2 granted.

3 C. Alioto's And Miller's Collective Previous Experience And Leadership  
4 In Class Action Cases And Knowledge About The Facts And  
5 Substantive Legal Issues Ensure Careful Identification And  
6 Investigation As The Case Continues.

7 Like many other plaintiffs' counsel in this case, Alioto and Miller have  
8 established their knowledge and begun investigation of the key issues, defendants, and  
9 industry in this case.

10 With the first status conference on April 4th, and case leadership still  
11 uncertain, the case clearly is in an early stage. The defendants remain under investigation  
12 by a host of international governmental authorities, including the Department of Justice.  
13 Alioto and Miller have significant experience and work-product knowledge in the area of  
14 alleged price fixing, including price fixing of consumer electronics produced in Asia and  
15 Europe. Both firms' past experiences are extremely valuable to the class and would allow  
16 for focused discovery from the outset.

17 Alioto and Miller affirm that should they be appointed interim lead co-  
18 counsel for indirect purchaser plaintiffs, they would continue to develop the issues and facts  
19 in these consolidated cases as well as identify and research all relevant legal issues.

20 D. Alioto And Miller Will Dedicate The Resources Necessary To  
21 Prosecute This Action In An Efficient Manner.

22 Miller has well over 30 years of litigation experience. Alioto has taken the  
23 lead role in preparing antitrust cases for trials for over 38 years and has extensive  
24 international experience in prosecuting antitrust and price-fixing actions. Miller Decl. at  
25 ¶¶3, 5; Alioto Decl. at ¶¶3-4. Alioto is located in the Bay Area and has practiced  
26 extensively before this Court, and its proximity to the Court will serve to facilitate efficient  
27 scheduling of hearings, conferences, and other activities with the Court and defense

1 counsel. To the extent that travel arrangements between the U.S. and Asia are necessary,  
 2 both of these two firms are well-suited to facilitate travel arrangements efficiently. As  
 3 evidenced by their history of litigating antitrust and class actions both national and  
 4 international in scope, the two firms possess the resources necessary to act as lead counsel  
 5 on the indirect purchaser side. Miller Decl. at ¶4, 6, 8; Alioto Decl. at ¶¶1-3, 7.

6 E. If Appointed As Interim Counsel, Alioto And Miller Would  
 7 Cooperate With The Other Candidates For Interim Lead Counsel For  
 8 The Indirect Purchasers.

9 1. Both Miller And Alioto Would Coordinate Efforts With Direct  
 10 Purchaser Counsel As Needed And Appropriate.

11 Given the caliber of attorneys that are working on the case, Alioto and Miller  
 12 expect that the need for coordination between the direct and indirect purchaser groups –  
 13 particularly in discovery matters – and an emphasis on moving forward in a professional  
 14 and efficient manner, are matters that are well understood. Should any defendant, or for  
 15 that matter direct purchaser counsel, point to *Illinois Brick Co. v. Illinois*, 431 U.S. 720  
 16 (1977)<sup>4</sup>, superseded in California by statute in *BWI Custom Kitchen v. Owens-Illinois, Inc.*,  
 17 191 Cal.App. 3d 1341 (1987), and related pass-on issues as questions requiring special  
 18 factual and legal attention, then the Alioto firm, which is at the forefront of issues  
 19 concerning the pass-on defense, is well prepared to address this issue. Alioto Decl., Ex. A.

20 Alioto and Miller believe that the case would also benefit from an entry of an  
 21 order for preservation of electronic evidence in the immediate future. With regard to a  
 22 protective order, Alioto and Miller anticipate that the defendants will bring a motion for  
 23 such an order, and the defendants should tender one by early May 2008 with a return date  
 24

25  
 26 <sup>4</sup> Issues remaining under study by the Antitrust Modernization Commission include  
 27 the remedies and legal liabilities in antitrust proceedings and whether that case serves or  
 28 deserves federal antitrust law. This area of the law may see significant developments prior  
 to the end of this litigation.

1 before the Court to resolve any differences. Because these matters are not novel, they can  
2 and should be performed by experienced counsel in fairly short order.

3 F. The Appointment Of Counsel Should Be Based On What Is Best For  
4 The Class And Should Not Be Determined Because Of The Result Of  
5 A Bargaining Process Among Competing Attorneys.

6 The task of the appointment of interim lead class counsel is unlike other civil  
7 litigation and is not a choice that is left solely to the clients or counsel. Instead, this task  
8 falls to the Court. *See generally* Manual For Complex Litigation Fourth (2004)  
9 (“Manual”), at §21.27. The self-appointment of counsel as a lead counsel candidate(s),  
10 particularly by those firms that repeatedly work together on other cases, does not  
11 necessarily dictate what is best for the class.<sup>5</sup> The Manual makes clear that the suggestion  
12 of counsel is but just one factor and that “[w]hile it may be appropriate and possibly even  
13 beneficial for several firms to divide work among themselves, such an arrangement should  
14 be necessary, not simply the result of a bargain among the attorneys.” Manual, *supra*, at  
15 10.224, citing *In re Auction Houses Antitrust Litig.*, 197 F.R.D. 71 (S.D.N.Y. 2000)  
16 (emphasis added); *Smiley v. Sincoff*, 958 F.2d 498 (2d Cir. 1992); *In re Fine Paper*  
17 *Antitrust Litig.*, 98 F.R.D. 48 (E.D. Pa. 1983), *aff’d in part and rev’d in part*, 751 F.2d  
18 562 (3d Cir. 1984).

19 The case leadership should not be guided in a manner that may be best suited  
20 for arrangements made among attorneys with competing interest for control, promises of  
21 work in return for agreement with the self-appointment, and division of attorneys’ fees. *See*  
22 *In re Int’l Air Transp. Surcharge Antitrust Litig.*, *supra* (two lead counsel). [In the pending  
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24 <sup>5</sup> See ¶7 of Scarpulla Declaration in Support of Zelle Hoffman and Lovell Stewart  
25 Motion Mem., describing continued and ongoing working relationship between these firms.  
26 Leadership structures that are cobbled together merely to advance or compromise the  
27 competing interests of particular lawyers in this or other cases, should be rejected. *See In*  
28 *re “Agent Orange” Prod. Liab. Litig.*, 818 F.2d 179, 187 (2d Cir. 1987) (citing *Cullen v.*  
*New York State Civil Serv. Comm’n.*, 566 F.2d 846, 849 (2d Cir. 1977)). The Plaintiff  
Class leadership organization should also meet the factors outlined in § 10.224 of the  
Manual.

1 *In re SRAM Antitrust Litigation*, MDL No. 1819 (N.D. Cal.), Judge Wilken rejected Zelle  
 2 Hofmann's original proposed leadership consortium as a top-heavy structure and only  
 3 allowed for one lead counsel. *See* Zelle Hofmann Mem. at page 1.]

4 G. The Interim Leadership Should Be Set Up With An Eye Toward Class  
 5 Certification And Efficient Trial Preparation, Not A Long  
 6 Administrative Procedure With Duplicative And Overlapping Work.

7 The Plaintiffs should work in a manner that assumes this price-fixing case  
 8 will proceed to trial as soon as practical. The leadership should not be structured with the  
 9 intention of setting up a long administrative process. By streamlining leadership and  
 10 focusing on what is needed for class certification and trial, the impetus will be on working  
 11 efficiently and minimizing the cost to the class. For example, the structure proposed by  
 12 Alioto and Miller will minimize overly-broad document requests and unnecessary document  
 13 review, whittling down depositions and subpoenas to the critical witnesses, and  
 14 accumulating only the evidence necessary for class certification and trial. *See In re Auction*  
 15 *Houses Litig.*, 2001-1 Trade Cas. (CCH) P73, 171, *approval of settlement rejected* in 135  
 16 F.Supp.2d 438 (S.D.N.Y 2001) (rejecting fee application of one of the applicants in this  
 17 case because of duplication of time and effort improperly by "counsel anxious to participate  
 18 in this litigation to find clients.").

19 The Manual specifically notes that the well-managed case must provide for  
 20 appropriate staffing and that such appropriate staffing will assure that the fees, if any, will  
 21 be based on results and a percentage of the recovery of the class. Manual, *supra*, at pp.  
 22 246-248.

23 IV. CONCLUSION.

24 For the foregoing reasons, including their combined extensive experience in  
 25 litigating complex class action and antitrust cases and their commitment to representing the  
 26 best interests of the indirect purchaser plaintiffs' class, the Alioto Law Firm and Miller Law  
 27

1 LLC respectfully request appointment as interim lead co-counsel for the indirect purchaser  
2 putative class.

3 Dated: March 14, 2008

Respectfully submitted,

4  
5 By: /s/ Joseph M. Alioto  
6 Alioto Law Firm

7  
8 By: /s/ Marvin A. Miller  
9 Miller Law LLC

10 *Attorneys for Plaintiffs and the Proposed*  
11 *Class*  
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# **EXHIBIT A**



UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

In Re: Cathode Ray Tube (CRT)	)	Case No. 07-5944 SC
Antitrust Litigation	)	MDL No. 1917
	)	
	)	ORDER LIFTING STAY,
	)	SETTING STATUS
CRAGO, Inc.,	)	CONFERENCE, AND
	)	SETTING HEARING ON
Plaintiff,	)	MOTIONS TO APPOINT
	)	<u>LEAD COUNSEL</u>
v.	)	
	)	
CHUNGHWA PICTURE TUBES, LTD., <u>et</u>	)	
<u>al.</u>	)	
	)	
Defendants.	)	
	)	

On February 15, 2008, the United States Judicial Panel on Multidistrict Litigation granted Plaintiff's Motion for Centralization, pursuant to 28 U.S.C. § 1407. The stay on all motions and proceedings imposed by this Court on January 29, 2008, Docket No. 37, is hereby LIFTED.

A status conference is hereby set for Friday, April 4, 2008, at 10:00 a.m. in courtroom # 1. Motions to appoint lead counsel will also be heard at this time.

IT IS SO ORDERED.

Dated: March 7, 2008



UNITED STATES DISTRICT JUDGE

# **EXHIBIT B**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

In Re: Cathode Ray Tube (CRT)	)	Case No. 07-5944 SC
Antitrust Litigation	)	08-0337 MMC
	)	
_____	)	
CRAGO, Inc.,	)	ORDER CONSOLIDATING
	)	<u>CASES</u>
Plaintiff,	)	
	)	
v.	)	
	)	
CHUNGHWA PICTURE TUBES, LTD., <u>et</u>	)	
<u>al.</u> ,	)	
	)	
Defendants.	)	
_____	)	

The Court hereby finds that civil case Pierce v. Beijing-  
Matsushita Color CRT Co., LTD., et al., Case No. 08-0337, is  
suitable for CONSOLIDATION for the purposes of discovery and pre-  
trial hearings. This consolidation is warranted by common  
questions of law and fact that pervade these individual matters.  
Consolidation will facilitate discovery and conserve judicial  
resources.

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1 This consolidated case will henceforth be referred to as "IN  
2 RE: Cathode Ray Tube (CRT) Antitrust Litigation," MDL No. 1971.  
3 All documents are to be filed under case number 07-5944-SC and all  
4 future filings are to bear the initials "SC" immediately after the  
5 case number.

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8 IT IS SO ORDERED.

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10 Dated: March 10, 2008



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12 UNITED STATES DISTRICT JUDGE  
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